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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael A. McCoy,

10 Plaintiff,

11 v.

12 Social Security Administration,

13 Defendant.
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No. CV15-0344-PHX-DGC

ORDER

15 On February 25, 2015, pro se Plaintiff Michael A. McCoy filed a complaint
16 against the Social Security Administration. Doc. 1. The Court screened the complaint
17 and dismissed it without prejudice for failure to state a claim, but allowed Plaintiff to file
18 an amended complaint. Plaintiff filed an amended complaint on May 11, 2015. The
19 Court has screened Plaintiff's amended complaint and will dismiss it without prejudice
20 for failure to state a claim.

21 **I. Legal Standard.**

22 Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that
23 states a claim for relief must contain . . . a short and plain statement of the claim showing
24 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). This short and plain statement
25 “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state
26 a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534
27 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
28 (2007)). Legal conclusions couched as factual allegations are not given a presumption of

1 truthfulness and “conclusory allegations of law and unwarranted inferences are not
2 sufficient.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Dismissal is
3 appropriate where the complaint lacks a cognizable legal theory, lacks sufficient facts
4 alleged under a cognizable legal theory, or contains allegations disclosing some absolute
5 defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699
6 (9th Cir. 1988).

7 **II. Plaintiff’s Complaint.**

8 Plaintiff sues the Social Security Administration (“SSA”).¹ Plaintiff appears to
9 assert that the SSA violated a “treaty or agreement” between the United States and
10 Germany and the Thirteenth and Fourteenth Amendments by “refus[ing] to comply with
11 a system set up to protect against lost retirement credits of a US citizen (myself) while
12 working abroad.” Doc. 7 at 1-2. Plaintiff seeks an award of credits he allegedly earned
13 while working in Germany, as well as \$200,000 in punitive damages. *Id.*

14 The amended complaint does not satisfy federal pleading requirements. The
15 complaint does not identify the “treaty or agreement” under which he sues, does not
16 explain the “system” he alleges was established to protect him, and does not identify the
17 cause of action that exists under the treaty or agreement. The amended complaint does
18 not cite the Social Security Act’s judicial review provision or demonstrate compliance
19 with its requirements for obtaining judicial review of SSA decisions. *See* 42 U.S.C.
20 § 405(g). And to the extent the amended complaint asserts constitutional claims, they are
21 foreclosed by Supreme Court precedent. *See Schweiker v. Chilicky*, 487 U.S. 412 (1988)
22 (there is no constitutional cause of action where an applicant alleges that the SSA
23 unconstitutionally withheld disability benefits). The Court will dismiss Plaintiff’s
24 amended complaint for failure to state a claim.

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27 ¹ This case was designated as an action for review of a determination of the
28 Commissioner of the Social Security Administration, but the Court finds nothing in
Plaintiff’s complaint suggesting he seeks such review. The Court therefore will not place
this case on an expedited track.

1 **III. Leave to Amend and Plaintiff's Obligations.**

2 In this circuit, “[a] pro se litigant must be given leave to amend his or her
3 complaint unless it is absolutely clear that the deficiencies of the complaint could not be
4 cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th
5 Cir. 1988). Although Plaintiff has twice failed to state a claim, the Court will permit him
6 one final opportunity to file an amended complaint. Plaintiff shall file his second
7 amended complaint on or before **November 20, 2015**.

8 Plaintiff is again advised that he must become familiar with, and follow, the
9 Federal Rules of Civil Procedure and the Rules of the United States District Court for the
10 District of Arizona (“Local Rules”), which may be obtained in the Clerk of Court’s
11 office. For purposes of the amended complaint, Plaintiff is directed to Rule 8 of the
12 Federal Rules of Civil Procedure. Rule 8(a) provides that a complaint “must contain (1) a
13 short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and
14 plain statement of the claim showing that the pleader is entitled to relief, and (3) a
15 demand for the relief sought.” Fed. R. Civ. P. 8(a). These pleading requirements shall be
16 set forth in separate and discrete paragraphs. Rule 8(d) provides that each such paragraph
17 “must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).

18 The “short and plain statement of the claim” required by Rule 8(a)(2) must not
19 only designate a cause of action, but must also include enough factual allegations to
20 render the claim plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). If Plaintiff
21 chooses to file an amended complaint asserting constitutional violations by federal or
22 state officials, his pleading should include a statement of the constitutional rights Plaintiff
23 believes to have been violated, how each right was violated, how each defendant
24 contributed to the violation, and what injury was caused by each alleged constitutional
25 violation. Such factual allegations must provide enough information to “allow[] the
26 court to draw the reasonable inference that the defendant[s are] liable for the misconduct
27 alleged.” *Iqbal*, 556 U.S. at 678.

28 If Plaintiff fails to prosecute this action or to comply with the rules or any Court

1 order, the Court may dismiss the action with prejudice pursuant to Federal Rule of Civil
2 Procedure 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
3 (holding that the district court did not abuse its discretion in dismissing a pro se
4 plaintiff's complaint for failing to comply with a court order).

5 **IT IS ORDERED:**

- 6 1. Plaintiff's amended complaint (Doc. 7) is **dismissed without prejudice**.
- 7 2. Plaintiff shall have until **November 20, 2015** to file an amended complaint.
- 8 3. The Clerk of Court shall terminate this action without further order of the
9 Court if Plaintiff fails to file an amended complaint on or before
10 **November 20, 2015**.

11 Dated this 22nd day of October, 2015.

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15 David G. Campbell
16 United States District Judge
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